



November 16, 2000

Mr. Kenneth Stewart
Associate General Counsel
Texas Department of Transportation
125 E. 11th Street
Austin, Texas 78701-2483

OR2000-4434

Dear Mr. Stewart:

You ask whether certain information is subject to required public disclosure under the Public Information Act, chapter 552 of the Government Code. Your request was assigned ID# 141348.

The Texas Department of Transportation (the "department") received a request for information relating to job numbers 010K540-230 and 010K540-430. You state that you will produce some of the responsive information, but claim that the remaining information is excepted from disclosure under section 552.122 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Section 552.122(b) excepts from disclosure test items developed by a licensing agency or governmental body. In Open Records Decision No. 626 (1994), this office determined that the term "test item" in section 552.122 includes any standard means by which an individual's or group's knowledge or ability in a particular area is evaluated, but does not encompass evaluations of an employee's overall job performance or suitability. Whether information falls within the section 552.122 exception must be determined on a case-by-case basis. Open Records Decision No. 626 at 6 (1994). Traditionally, this office has applied section 552.122 where release of "test items" might compromise the effectiveness of future examinations. *Id.* at 4-5; *see also* Open Records Decision No. 118 (1976).

You state that the interview question involves standards by which an individual's stated knowledge or ability in a particular area is evaluated. You explain that the question relates to the stated knowledge, skills, and abilities required for the position and does not focus on qualifications or experience unique to a particular applicant. You state that the department anticipates using this interview question for future job vacancies of this kind and that the preferred answer is an integral part of the question itself and reveals the nature of the question asked. Similarly, you argue that the actual answer reveals the nature of the question

posed. Based on your arguments and our review of the submitted test question and answers, we agree that, with the exception of the question we have marked, the questions and their corresponding preferred and actual answers represent test items developed by a governmental body that are excepted from disclosure under section 552.122(b). Therefore, you may withhold most of the questions along with their corresponding preferred and actual answers under section 552.122 as information which tests the applicant's knowledge or ability in a particular area. You may not withhold Question 2 and its corresponding answers, which we have marked.

You also seek to withhold the KSA scoring criteria. You make the following statements and arguments regarding this information.

Just as the questions and answers are used to "grade" the applicant's interview, the department uses the KSA criteria to grade each KSA. An applicant who does not meet the KSA criteria is screened out before reaching the interview stage. We do not ask to withhold the KSAs that are listed on the Job Vacancy Notice, but rather we ask to withhold the relevant subdivisions of those KSAs and the numerical grading criteria for each KSA. To allow the KSA grading criteria to be released would give a knowledgeable applicant a road map to ensuring an interview, to the disadvantage of others who may be more qualified, but are submitting applications in good faith without advance knowledge of the scoring criteria. Allowing preferred access to state jobs would constitute a misuse of public money and would defeat the department's mandate to hire the best-qualified applicant. Therefore, the KSA scoring sheet should be withheld.

After reviewing the submitted information, we do not agree that the KSA scoring criteria qualify as "test items" for the purposes of section 552.122(b). Therefore, the KSA scoring criteria may not be withheld under section 552.122(b).

In summary, with the exception of the question we have marked, the submitted interview questions, along with the preferred and actual answers, are excepted from disclosure under section 552.122(b) of the Government Code and may be withheld. The KSA scoring sheets are not excepted from disclosure and must be released.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days.

Id. § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to the General Services Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in cursive script that reads "Amanda Crawford". The signature is written in dark ink and is positioned above the typed name and title.

Amanda Crawford
Assistant Attorney General
Open Records Division

AEC/er

Ref: ID# 141348

Encl: Submitted documents

cc: Mr. Ralph R. Walters
P.O. Box 1375
Kilgore, Texas 75663
(w/o enclosures)